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10/580,732	05/25/2006	Iain James Campbell	F3341(C)	8700

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UNILEVER PATENT GROUP
800 SYLVAN AVENUE
AG West S. Wing
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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03/25/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In reference to claims 5-10, the claimed subject matter does not further limits the method of dispensing product claimed in claim 1. The structure claimed in claims 5-10 would be better suited for a method of manufacturing or an apparatus claim, not a method of dispensing.

In reference to claim 11, it appears the claimed pressure range is a double inclusion to the pressure range between 5 bars and 12 bars claimed in claim 2.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,233,779 to Cornelius in view of US 2003/0134024 A1 to Malone et al.

Cornelius shows a method of filling a food product into a compartment 16 of a container 10, where the container has another compartment 17 filled with a propellant at a pressure of 7.4

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Bars, see column 5, lines 12-15. The two compartments are gas tightly separated by a moveable wall 12.

Cornelius shows all claimed features as discussed above except for using the dispenser to dispense a frozen aerated food product containing a freezing point depressant with a molecular weight less than or equal to $-8 \text{ Fat} + 330$, mixed with an ice cream product. Malone shows a frozen aerated food product containing a freezing point depressant in the range of 25-37% and between 2-12% fat by weight that satisfies the above equation, see column 2, lines 51-58 and column 3, lines 9-11. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to dispense the frozen aerated food product of Malone in the device of Cornelius to prevent the propellant from coming in contact with the product and alter the desired characteristics of the ice cream product.

Response to Arguments

5. In response to applicant's argument that the Office Action does not explain why the hose of the device of Cornelius would be suitable for viscous frozen confection, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

6. Moreover, the suitability of the hose to dispense viscous frozen confection is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-TH (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754